

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 1053 OF 1997

Maharashtra State Financial
Corporation..... Petitioners.

Versus

Pawan Proteing (India) Ltd.. Respondent.

Ms. Deepa Mani i/by Ms. S. K. Srivastava
for the Petitioners.

CORAM: A. M. KHANWILKAR, J.

DATE : 2ND AUGUST, 2005

P.C.:

Heard Counsel for the Petitioners. None appears for the Respondents, though served. No reply has been filed opposing this petition.

2. According to the Petitioners, they had extended financial assistance to the Respondent Company in the sum of Rs.140 lakhs. The Respondent Company paid part amount of Rs.20.60 lakhs thereby leaving balance of Rs.119.60 lakhs payable to the Petitioners. The said balance amount was rolled-over by the Petitioners. The Respondent Company failed to retire the bill of exchange on the maturity date. Eventually, the Respondent

Company issued post dated cheques in the sum of Rs.108 lakhs towards retirement of the said bill of exchange. Later on the Respondent Company requested the Petitioners to grant of extension by fortnight for payment of the cheques in question. However, the said cheque when deposited, was returned back unpaid with remarks "Insufficient funds in the account" in February, 1997. The Petitioners have resorted to criminal action under Section 138 of the Negotiable Instruments Act with regard to the dishonoured cheque and the same is pending. However, as the liability was acknowledged by the Respondent Company and the amount has not been paid, the Petitioners issued statutory notice which remained unreplied. Besides, no payment was offered by the Respondent Company to the Petitioners.

3. In the circumstances, the present petition under Sections 433 and 434 of the Companies Act came to be filed by the Petitioners on 27th November, 1997. This petition was admitted on 21st December, 1999. The Petition has been duly advertised and published. In spite of publication and advertisement none appears for the Respondent Company nor any reply has been filed controverting the assertion raised in the petition. In other words, the assertion made in the petition, which are supported by the documents placed on record, have remained unchallenged. It necessarily follows that the

Respondent Company has failed to rebut. In that sense the legal presumption against the Respondent Company arises that it is unable to pay its debts. In that situation, this Court has no option but to allow the prayer of the Petitioner for winding up of the Respondent Company.

4. Accordingly, this petition is made absolute in terms of prayer clauses (a) and (b).

Sd/-

(A.M.KHANWILKAR, J.)